

**MINUTE ENTRY  
FALLON, J.  
OCTOBER 18, 2005**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: PROPULSID** : **MDL NO. 1355**  
**PRODUCTS LIABILITY LITIGATION** : **SECTION "L"**  
: **JUDGE FALLON**  
..... :

**THIS DOCUMENT RELATES TO ALL CASES**

A pretrial status conference was held on this date in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Arnold Levin, Charles Zimmerman, Carroll Ingram, Jennifer Ingram Wilkinson, Barry Hill, James Capretz, Dawn Barrios, Richard Arsenault, and Daniel Becnel. In attendance for the Defendants were James Irwin, Chuck Preuss, Thomas Campion, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 43 of Plaintiffs' and Defendants' Liaison Counsel.

I. State Liaison Counsel

Richard Arsenault of the State Liaison Counsel advised the Court that the SLC continues to conduct a census of the pending state cases. This census is intended to determine how many cases and what type of claims remain to be resolved. SLC is in discussions with Defendants regarding potential settlement of the pending state cases. Both sides indicated that the discussion was proceeding well and that they were optimistic.

II. Service List of Attorneys

The parties provided the Court with an updated list of attorneys in the MDL case, as well

as related state court cases, and pro se plaintiffs. Defendant's Liaison Counsel advised the Court that due to the displacement of many attorneys from Hurricane Katrina, the list may be somewhat inaccurate. The list will be up to date by the next monthly status conference.

III. Trust Account

Since the last status conference, there has been no activity regarding the Trust Account.

IV. Trial Schedule

*Marion T. Bucaria for the Estate of Thomas Bucaria v. Johnson & Johnson Co., et al.*, No. 04-1277, will be tried in this Court in February 2006 in New Orleans, Louisiana. The Court has held a status conference in *Bucaria*, and pre-trial preparations are underway and proceeding on schedule.

V. Pharmacy Indemnity Agreements

There have been no pharmacy indemnity agreements executed by Defendants since the last status conference.

VI. MDL Mediation and Resolution Program

Russ Herman reported to the Court on the status of the MDL Settlement Program. Since Hurricane Katrina, the Special Master has set up a new office in Lafayette, Louisiana, where the Settlement Program is now managed. Jim Capretz reported that his experience with Special Master Juneau's staff has been excellent across the board, and congratulated Mr. Juneau for the smooth and quick transition after the hurricane.

Regarding processing of claims, Mr. Herman reported that the Special Master has been in contact with Plaintiffs' and Defendants' Liaison Counsel to develop an expedited process for disposition of certain bright-line claims. Approximately 26 Tier I claims are waiting to be processed. About 1,000 short-form claims have been processed, and approximately one half of

those processed have been paid. Another 50 significant cases will be sent to the Settlement Program by the end of this week. Due to the administrative issues many attorneys face after Hurricane Katrina, Plaintiffs' and Defendants' Liaison Counsel have agreed to extend the deadline for submission of claims to **December 15, 2005**. The Court will issue a separate Order on this point, and notice will be given to attorneys via the Court's Web site and the state liaison newsletter.

The Court reported that the Special Master is communicating with the government to resolve issues related to health-care liens on potential settlement funds. The Court, the Special Master, and attorneys from the government met on October 7 to initiate discussions on this issue.

VII. Pending Motions

Tom Campion reported that the Defendants have withdrawn their motions for summary judgment in *Crum*, No. 02-2447, *Henderson*, No. 02-2448, and *Salyard*, No. 02-2448. These cases have now settled.

VIII. Pro se Plaintiffs

On September 26, 2005, Defendants provided the PLC with a revised proposed motion setting forth procedures for notice to pro se plaintiffs and management of their cases. The PLC is currently reviewing the motion. Also, Defendants are researching the effect upon this motion of the Eastern District of Louisiana's and State of Louisiana's orders suspending prescription deadlines due to the hurricane.

IX. Verilaw/Lexis Propulsid Litigation Migration

No further problems have been reported with the Lexis-Nexis program.

X. Preservation of Electronic Data

Two months ago, Defendants provided to PLC a proposed motion detailing the

modifications that Johnson & Johnson desires to make to their procedures for preservation of electronic data. The PLC circulated the motion to all Plaintiffs' counsel two months ago, and the PLC has received no objections. Defendants will now prepare the motion in final form to be filed with the Court.

XI. Proposed Order to Reflect Dismissal of Certain Tolling Agreement Claimants

The DLC and PLC are in discussions regarding this order, and there is no status report at this time. This motion will concern tolling agreement claimants who are not awarded compensation through the Settlement Program and "Short Form" claimants.

XII. Report of Special Master

Special Master Patrick Juneau provided his report regarding the Settlement Program to the Court on September 28, 2005.

XIII. Motion for Clarification of August 12, 2005 Minute Entry

Carroll Ingram of Ingram & Associates has filed a Motion for Clarification of August 12, 2005 Minute Entry. Defendants oppose this motion. Because counsel represented that they wish to attempt to resolve this matter without the Court's intervention, the motion is taken under submission. The Court will rule on the motion only after hearing from Mr. Ingram that the matter has not been resolved.

XIV. Proposed Order Approving a Wrongful Death Settlement Award Made By the Special Master in the MDL 1355 Settlement Program

Defendants are reviewing this proposed Order, drafted by Barry Hill. This order would avoid duplicate approvals between state equity, chancery, and common pleas courts, and would consolidate the issues into one MDL order. Counsel anticipates that the motion will be ready for filing by the next monthly status conference.

XV. Emergency Motion for Distribution of Attorney's Fees

The PSC's motion for distribution of attorney's fees under the Settlement Program was set for hearing today, October 18. The PSC met on October 11 to discuss this motion, and they requested that the Court hear oral argument after the Special Master submits his recommendation to the Court on distribution of fees. Accordingly, the Court shall hear oral argument on the Emergency Motion for Distribution of Attorney's Fees on Tuesday, November 22, 2005, at 1:00 p.m. in New Orleans, Louisiana.

XVI. Next Monthly Status Conference

The next monthly status conference shall be held on Thursday, December 15, 2005 at 9:00 a.m. in New Orleans, Louisiana.